

CHINAIYA

A

v.

REGINAM

[SUPREME COURT, 1962 (MacDuff C.J.), 10th, 24th August]

Appellate Jurisdiction

B

Criminal law—intimidation—proof of intent to cause alarm—nature of threat and other relevant circumstances—Penal Code (Cap. 8) ss.78, 359(a)—Conspiracy and Protection of Property Act 1875 (38 & 39 Vict., c.86) (Imperial) s.7—Indian Penal Code, s.503.

Criminal law—evidence and proof—proof of intent to cause alarm—nature of threat and other relevant circumstances—Penal Code (Cap. 8) s.359(a).

C

The appellant was convicted of criminal intimidation in that he did without lawful excuse threaten Lalta Prasad Sharma with injury to his person with intent to cause him alarm. There was evidence of a threat by the appellant to cause injury to Lalta Prasad Sharma for the purpose of deterring him from giving evidence against the appellant in an apprehended prosecution. There was no direct evidence that Lalta Prasad Sharma was in fact alarmed, and the threat to cause him injury was limited to a threat to "hit" him.

D

Held : 1. The intent to cause alarm may be inferred from the type of threat itself and any other relevant facts and circumstances.

2. The meaning of the word "alarm" in section 359(a) of the Penal Code is "the hurried agitation of feeling which springs from a sense of immediate and extreme exposure to danger".

E

3. The circumstances proved were insufficient to enable the magistrate to find that there was any sense of immediate and extreme exposure to danger induced by the threat, or that this was the intent of the appellant.

F

Cases referred to : *Abdul Sattar v. R.* (1960) 7 F.L.R. 14 : *R. v. Ahmed Deedar Gadabursi Jibrain* [1958] E.A. 107.

Appeal from a conviction by a magistrate's Court.

R. I. Kapadia for the appellant.

B. A. Palmer for the respondent.

G

The facts appear from the judgment of the Chief Justice.

MACDUFF C.J. : [24th August, 1962]—

The appellant was convicted by the Magistrate, First Class, Ba, of the following offence :

" *Statement of Offence*

Criminal Intimidation : Contrary to Section 359(a) of the Penal Code, Cap. 8.

H

Particulars of Offence

A CHINAIYA son of Chitaiya and NARAIN NAIDU son of Chinaiya on the 18th day of December, 1961, at Varoka, Ba, in the Western Division, did without lawful excuse, threaten another person to wit: LALTA PRASAD SHARMA s/o Ram Sarup with injury to his person, with intent to cause alarm."

The Appellant appeals against that conviction on two grounds :

- B "(a) That the learned Magistrate erred in law in convicting your Petitioner in view of the fact that there is no evidence to show that your Petitioner intended to cause alarm to the complainant or to cause injury to his property or person.
- (b) That the verdict is unreasonable and cannot be supported having regard to the weight of the evidence advanced."

C The facts were briefly that the Appellant was in some apprehension that he might be charged with the larceny of some rice, as he eventually was. Prior to being actually charged he approached one Lalta Prasad Sharma, whose evidence was this :

"Chinaiya told me not to give evidence against them and if I did he would hit me."

The learned Magistrate accepted this evidence and found as follows :

D "I am satisfied that the words used, accompanied by the additional threat that he would hit witness, constitute an unlawful threat on the part of accused to cause injury to the person of Lalta Prasad with intent to cause him alarm."

E It is clear, therefore, that there was evidence of a threat to cause injury. There was, however, no direct evidence that alarm was caused to Lalta Prasad.

Counsel for the Crown contended that the mere threat of violence to his person was sufficient of itself to entitle the learned Magistrate to draw the inference that alarm was caused to Lalta Prasad. The Section of the Penal Code under which the charge was laid reads:

"359. Any person who without lawful excuse—

- F (a) threatens another person or other persons, whether individually or collectively, with any injury to his or their person or persons, reputation or property, or to the person, reputation or property of anyone in whom that person is or those persons are interested, with intent to cause alarm to that person or those persons, or to cause that person or those persons, to do any act which that person is or those persons are not legally bound to do, or to omit to do any act which that person is or those persons are legally entitled to do, as the means of avoiding the execution of such threat."

H To hold that the threat of injury itself was in any case sufficient from which a Court would infer that alarm was caused to the person threatened would necessarily result in holding that the intents referred to in the Section are so much surplus verbiage. That is against every rule of construction of which I am aware.

I take a similar view to that expressed by Lowe C.J. in *Abdul Sattar and Ram Gopal v. Reginam* (1960) 7 F.L.R. 14 when he was concerned with the expressions "to cause persons in the neighbourhood reasonably to fear" and "to the terror of the public" occurring in Section 78 of the Penal Code. He held that fear by persons in the neighbourhood could be implied by the nature of the assembly, its conduct, numbers and such relevant matters, and in a like manner terror to the public could be inferred from the nature of the breach of the peace committed by an unlawful assembly and other relevant factors. In my view the intent to cause alarm may be inferred from the type of threat itself and any other relevant facts and circumstances.

A

B

The Court itself took the point that some meaning must be given to the phrase "with intent to cause alarm". The learned trial Magistrate did not give any consideration to whether the threat used by the Appellant did in fact cause alarm to him, nor what meaning should be attached to the word "alarm"—what intent is required to be proved to support the charge under this Section and whether that intent had been proved.

C

The similar offence in England occurs in the Conspiracy and Protection of Property Act, 1875, in these words:

"7. Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority,

D

1. Uses violence to or intimidates such other person ..."

It will be observed that the intent to cause alarm is no part of the offence under that Section.

Apparently this intent was added in the Indian Penal Code, Section 503 of which reads:

E

"503. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

F

Explanation—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

G

The only commentary on that Code available to me is that of *Ratanlal and Dhirajlal Thakore*, 22nd Edition. Unfortunately there is no mention of what is meant by the word "alarm". There is, however, one statement in the commentary at p.429 of which I must express disapproval. It reads:

"The offence of criminal intimidation seems to require both a person to be threatened and another in whom he is specially interested."

H

This applies only to one type of offence created by the Section.

- A The Indian Penal Code is the criminal law in the Somaliland Protectorate and Section 503 of that Code was considered by the Court of Appeal for Eastern Africa on appeal from the High Court of the Protectorate in *R. v. Ahmed Deedar Gadabursi Jibrain* [1958] E.A. 107. The facts in that case were similar to those in the present case. The complainant was threatened with injury to his person, two threats "to kill" and one "to hurt" the complainant, with the object of inducing the complainant from ceasing to cultivate a certain piece of land. He was charged under Section 503 with threatening the complainant with injury to his person with intent to cause him alarm. At p. 110 of the Report the Court said:

- C "Mr. Carrick-Allan argued that the offence as charged fell under the first part of the section, and that if it was shown that the respondent's intent had been to cause alarm the offence was established regardless of any other reason there may have been for the threats. We felt, however, that the first part of the section could not be viewed entirely in isolation, and that where a threat was uttered the primary object of which was to induce a person to abstain from doing something which he had no legal right to do, the fact that the threat might incidentally be calculated to cause alarm would not normally bring it within the first part of the section. In the instant case, although the respondent was charged with threatening the complainant with intent to cause alarm, the learned magistrate's finding appears to be that the primary intent was to stop the complainant from ploughing the disputed garden."

- E If the reasoning of my learned brethren in East Africa were to be applied to the facts of the present case the appeal would be allowed on that ground alone. The primary intent of the Appellant in this case was to cause the Complainant not to give evidence against him. However, he was not charged with that intent but only with the intent to cause alarm to the complainant.

- F While decisions of the Court of Appeal for Eastern Africa have high persuasive authority they are not binding on this Court and in its interpretation of Section 503, in my view, that Court has failed to give full effect to the word "or" after the words "with intent to cause alarm to that person". This word is disjunctive and separates the two different intents set out in the Section. Accordingly I hold the view that the intent to cause alarm to that person is a separate intent specified in the Section, and if proved will support a conviction without having regard to the further intents set out in the section.

- G This brings me back to what is the meaning of the "intent to cause alarm to that person". In the Shorter Oxford English Dictionary there are two meanings of the word "alarm" that may be apposite. The meanings given are "a warning of danger of any kind" and "a state of excitement caused by danger apprehended". Webster's Dictionary gives one meaning—"sudden surprise with fear or terror, excited by apprehension of danger". That Dictionary in expressing the shades of meaning in and the differences between the words "Alarm, Fright, Terror and Consternation" uses this definition—Alarm

is the hurried agitation of feeling which springs from a sense of immediate and extreme exposure (to danger). The words in brackets are mine, and I would adopt this as being the meaning to be attached to the word "alarm" in Section 359(a) of the Penal Code.

The learned Magistrate has not given any reasons for holding that the intent of the Appellant was to cause alarm to Lalta Prasad Sharma. Lalta Prasad himself did not say that he was caused alarm. Nor do I think the circumstances were such as to enable the learned Magistrate to find that there was any sense of immediate and extreme exposure to danger induced by the threat in Lalta Prasad, or that this was the intent of the Appellant. Accordingly I would hold that the prosecution had failed to prove the intent required to support the charge.

For that reason the appeal is upheld and conviction is quashed.

Appeal allowed.